

Due to the conflicting testimony, the credibility of the witnesses becomes an important consideration. Although claimant's supervisor does not directly dispute claimant's testimony, that is certainly the implication to be drawn therefrom. Furthermore,

it is the conclusion the respondent argues should be drawn. In weighing the evidence and considering the credibility of the witnesses, the Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe the witnesses' testimony. In finding the claim compensable, the Administrative Law Judge must have believed the claimant's testimony. The Appeals Board gives some deference to the conclusions of the Administrative Law Judge in this regard.

Based upon a review of the record as a whole, we find that notice was timely given and that the Order by the Administrative Law Judge should, therefore, be affirmed.

Respondent's counsel, in his brief, refers to a comment attributed to the Administrative Law Judge which does not appear in the record. The reference is apparently intended to show bias or prejudice on the part of the Administrative Law Judge. If that is its purpose, then this is not the method by which such a concern is to be raised. In any event, discussion of matters not contained within the record is improper. Comments by respondent's counsel upon matters outside the record were not considered and had no bearing upon the Appeals Board's decision in this case.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated April 11, 1996 preliminary hearing Order of Administrative Law Judge Shannon S. Krysl should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

c: Keith L. Mark, Mission, KS  
Stephen A. McManus, Kansas City, KS  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director